IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10021 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MODASA NAGARPALIKA KARMACHARI MANDAL

Versus

STATE OF GUAJRAT

Appearance:

1. Special Civil Application No. 10021 of 2002

MR AMIT M PANCHAL for Petitioner No. 1-5

MR RV DESAI, AGP for Respondent No. 1-3

NOTICE SERVED BY DS for Respondent No. 4

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 18/10/2002

ORAL JUDGEMENT

Rule. Mr Desai, learned AGP for respondent Nos. 1 to 3 and the Chief Officer Mr NR Patel waive service of Rule for the respondents. With the consent of the

learned counsel for the parties, the petition is taken up for final disposal today.

2. This petition is filed on behalf of the employees of Modasa Municipality. The petitioners claim to be the employees regularly appointed on the posts and working since last many years, most of them claim to be in employment of the Municipality for twenty years or longer.

It is the case of the petitioners that there is no justification for withdrawal of the Fifth Pay Commission pay-scales as the Director of Municipalities had passed order dated 19.11.1999 sanctioning payment of salaries in such pay-scales. It is further contended that if the income of the Municipality under all the heads is taken into account, the salary expenses on the establishment do not exceed 45% of the total income.

It is further submitted that in any view of the matter the payment of salaries to the regular employees in the Fifth Pay Commission pay-scales cannot be reduced.

3. In response to the notice issued by this Court, affidavit in reply has been filed by Mr NR Patel, Chief Officer of the Municipality placing on record the statements of income and expenditure. It is already held in the decision dated 3.10.2002 of this Court in Special Civil Application No. 8434 of 2002 that the octroi grant and the salary grant being received from the Government/Gujarat Municipal Finance Board are required to be included in the revenue income of the Municipality for the purpose of applying the 45% limit.

It transpires from the statements produced with the reply affidavit of the Chief Officer of the Municipality that in the year 2001-2002, the total revenue income of the Municipality (excluding the project grant and the interest on the project grant) was Rs.2.63 lacs. The total salary bill was Rs.126 lacs (approx.) including Rs.28.77 lacs being paid as wages to the daily wagers and Rs.28.67 lacs being paid as salaries to the staff regularized pursuant to the awards of the Labour Court. On that basis, the percentage of the salary bill to the revenue income of the Municipality works out to Rs.47.97%

4. Mr Amit Panchal, learned counsel for the petitioners had earlier pointed out and it is not disputed by the Chief Officer that the last instalment of

octroi grant of Rs.11.35 lacs was received by the Municipality for the year 2001-2002 but on account of the disturbances in the month of March, the amount was not deposited and was credited in the Municipality's income account in April 2002. If the said amount is included in the income of 2001-2002, the salary bill percentage works out to 45.98%. It is further stated that on account of the disturbances in the town, the toll nakas established for the purpose of collecting tolls at the rate of Rs.10 per loaded vehicle could not be collected in the month of March, 2002.

5. It also appears from the statement showing monthwise income of the Municipality that the income of the Municipality had suddenly dipped in the month of March, 2002 both the in respect of collection of taxes and collection of other income of the Municipality. The Court can take judicial notice of the disturbances in March, 2002.

It, therefore, appears that this is a border line case where the salary bill of the Municipality exceeded 45% limit of the revenue income of the Municipality only marginally by just about 1% (one percent).

6. Considering the peculiar facts and circumstances of the case especially the sudden dip in the tax recovery and the income of the Municipality in the month of March, 2002, and considering the fact that all the necessary facts and figures about the income and expenses of the Municipality would be considered by the Director of Municipalities, it is directed that the Chief Officer of the Municipality shall not reduce the pay-scales of the employees of the Municipality, who are regularly appointed, till the Director of Municipalities decides the matter subject to the following conditions -

(i) the Chief Officer shall submit all the statements of income and expenditure for the last three years and also for the period upto October, 2002 by 30.11.2002 and thereafter the Director shall decide the matter by 28.2.2003.

(ii) the Chief Officer shall suggest ways and means of increasing the income of the Municipality and shall also state how the Chief Officer proposes to keep the salary bill within the 45% limit of the revenue income of the Municipality for the present year as well as for the future years.

(iii) while continuing the pay of the regular employees

in the Fifth Pay Commission pay-scales, the Chief Officer shall take all necessary steps to ensure that the salary bill remains within the 45% limit of the total revenue income of the Municipality.

(iv) the Chief Officer shall pay the salaries in the Fifth Pay Commission pay-scales to such regular employees who submit an undertaking to the Director of Municipalities and to the respondent Municipality that the concerned employee shall refund the amount, if any, which is found, at the end of the year, to be in excess of 45% of the revenue income of the respondent Municipality for the year 2002-2003.

For this purpose, if at all required, the amount to be refunded by each individual employee shall be worked out by the Chief Officer in the same proportion which the difference between the amount of salary and allowances paid in the Fifth Pay Commission and the amount of salary and allowances in the Fourth Pay Commission for the year 2002-2003 will bear to the amount in excess of 45% of the revenue income of the Municipality for the year 2002-2003 (including the octroi grant and the salary grant).

7. It is clarified that the above directions are for the interregnum period till the Director decides the matter and that it will be open to the Director to take the final decision in light of the relevant details placed before him, but subject to the direction that while calculating the revenue income of the Municipality, the octroi grant and salary grant shall be treated as a part of the revenue income of the Municipality.

In case the decision of the Director is adverse to the employees, they will be at liberty to challenge the same in appropriate proceedings before the appropriate forum.

8. The petition stands disposed of accordingly. Rule is made absolute to the aforesaid extent with no order as to costs.

Direct Service is permitted.

(M.S. Shah, J.)
sundar/-